REMARKS / ARGUMENTS

Status of Claims

Claims 1-18 are pending in the application. Claims 1-3, 5, 7-11, 13, 14 and 16-18 stand rejected. Claims 4, 6, 12 and 15 are objected to as being dependent upon a rejected claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant appreciates the Examiner's comments regarding the allowability of the noted claims. Applicant has canceled Claim 5, has amended Claims 1, 6 and 17, and has added new Claims 19-20, leaving Claims 1-6 and 7-19 for consideration upon entry of the present Amendment.

Applicant respectfully submits that the rejections under 35 U.S.C. §102(b) and 35 U.S.C. §103(a) have been traversed, that no new matter has been entered, and that the application is in condition for allowance.

Rejections Under 35 U.S.C. §102(b)

Claims 1-3, 7-9, 13 and 14 stand rejected under 35 U.S.C. §102(b) as being anticipated by Garner et al. (U.S. Patent No. 4,648,007, hereinafter Garner).

Claims 1, 2, 5, 8-10 and 17 stand rejected under 35 U.S.C. §102(b) as being anticipated by Baddour et al. (U.S. Patent No. 6,031,717, hereinafter Baddour).

Applicant traverses this rejection for the following reasons.

Applicant respectfully submits that "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, ***in a single prior art reference***." *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) (emphasis added). Moreover, "[t]he identical invention must be shown in as complete detail as is contained in the *** claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Furthermore, the single source must disclose all of the claimed elements "arranged as in the claim." Structural Rubber Prods. Co. v. Park Rubber Co., 749 F.2d 707, 716, 223 U.S.P.Q. 1264, 1271 (Fed. Cir. 1984). Missing elements may not be

supplied by the knowledge of one skilled in the art or the disclosure of another reference. Titanium Metals Corp. v. Banner, 778 F.2d 775, 780, 227 U.S.P.Q. 773, 777 (Fed. Cir. 1985).

Regarding Claim 1

Applicant has canceled Claim 5 and amended Claim 6, and has amended Claim 1 to include limitations from Claims 5 and 6, such that Claim 1 now recites, inter alia,

"...wherein ***the baffle flexes in response to an air flow from each of the at least two drivers and in response to a pressure differential across the baffle such that the plenum shape changes to optimize the flow*** regardless of whether one of the at least two drivers is non-operational."

No new matter has been added by this amendment as antecedent support may be found in the specification as originally filed.

Dependent claims inherit all of the limitations of the respective parent claim.

The Examiner acknowledges that Garner and Baddour are deficient for purposes of anticipating Claim 6. Paper 07082005, page 6.

In comparing Garner with amended Claim 1, Applicant submits that Garner is absent the limitation of "...wherein ***the baffle flexes in response to ... a pressure differential across the baffle such that the plenum shape changes to optimize the flow*** regardless of whether one of the at least two drivers is non-operational."

In comparing Baddour with amended Claim 1, Applicant submits that Baddour is absent the limitation of "...wherein ***the baffle flexes in response to an air flow from each of the at least two drivers...***"

In view of the foregoing, Applicant submits that Garner and Baddour are each absent disclosure of each and every element of the claimed invention arranged as claimed, and therefore cannot be anticipatory.

Regarding Claim 13

Claim 13 recites, inter alia,

"...***a heat exchanger***; and

...

wherein ***the heat exchanger is disposed proximate the exit of the device and in fluid communication with the fluid flow from the device.***"

Dependent claims inherit all of the limitations of the parent claim.

The Examiner alleges that Garner anticipates Claim 13, but has not shown with specificity where Garner discloses ***a heat exchanger disposed proximate the exit of the device and in fluid communication with the fluid flow from the device.***

Absent anticipatory disclosure of each and every element of the claimed invention arranged as claimed, Garner cannot be anticipatory.

In view of the foregoing, Applicant submits that the Examiner has not shown where Garner discloses each and every element of the claimed invention arranged and claimed, and therefore has not met the burden of a showing of anticipation.

Regarding Claim 17

Applicant has amended Claim 17 to include the limitation of,

"...***a baffle*** disposed within the plenum and ***flexibly responsive to an air flow from each of the two fans...***"

Dependent claims inherit all of the limitations of the parent claim.

In alleging anticipation, the Examiner cites Baddour, which discloses a louver member 12 of bendable flaps 14 proximate a fan 20, where the flaps 14 of a given louver member 12 are responsive to the air flow from a single fan 20. As disclosed, Applicant submits that each louver member 12 of Baddour is responsive to a single fan 20.

In comparing Baddour with the instant invention, Applicant submits that the flaps 14 of Baddour are not disposed within the plenum in such a manner as to be ***flexibly responsive to an air flow from each of the two fans,*** and therefore cannot be anticipatory.

Accordingly, Applicant submits that Garner and Baddour do not separately disclose all of the claimed elements arranged as in the claim, and absent anticipatory disclosure in Garner or Baddour of each and every element of the claimed invention arranged as in the claim, neither Garner nor Baddour can be anticipatory.

In view of the amendment and foregoing remarks, Applicant submits that the References do not disclose each and every element of the claimed invention arranged as claimed and therefore cannot be anticipatory. Accordingly, Applicant respectfully submits that the Examiner's rejections under 35 U.S.C. §102(b) have been traversed, and requests that the Examiner reconsider and withdraw of these rejections.

Rejections Under 35 U.S.C. §103(a)

Claims 11 and 16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Garner in view of French (U.S. Patent No. 6,135,875, hereinafter French).

Claim 18 is rejected under 35 U.S.C. 103(a) as being upatentable over Baddour in view of French.

Applicant traverses these rejections for the following reasons.

Applicant respectfully submits that the obviousness rejection based on the References is improper as the References fail to teach or suggest each and every element of the instant invention. For an obviousness rejection to be proper, the Examiner must meet the burden of establishing a prima facie case of obviousness. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988). The Examiner must meet the burden of establishing that all elements of the invention are taught or suggested in the prior art. MPEP §2143.03.

The Examiner applies French for purposes relating to the deficiencies of Garner and Baddour in teaching a tachometer as claimed, and does not apply French for purposes relating to the aforementioned amendments.

Accordingly, and in view of the aforementioned amendments, Applicant submits that French fails to cure the deficiencies of the other References as applied to the parent claims, and therefore does not serve to properly establish a prima facie case of obviousness.

Dependent claims inherit all of the limitations of the respective parent claim and any intervening claim.

In view of the foregoing, Applicant submits that the References fail to teach or

suggest each and every element of the claimed invention and are therefore wholly inadequate in their teaching of the claimed invention as a whole, fail to motivate one skilled in the art to do what the patent Applicant has done, fail to offer any reasonable expectation of success in combining the References to perform as the claimed invention performs, and discloses a substantially different invention from the claimed invention, and therefore cannot properly be used to establish a prima facie case of obviousness. Accordingly, Applicant respectfully requests reconsideration and withdrawal of all rejections under 35 U.S.C. §103(a), which Applicant considers to be traversed.

In light of the forgoing, Applicant respectfully submits that the Examiner's rejections under 35 U.S.C. §102(b) and 35 U.S.C. §103(a) have been traversed, and respectfully requests that the Examiner reconsider and withdraw these rejections.

Regarding New Claims 19 and 20

Applicant has added new Claims 19 and 20, which are each dependent from Claim 13 and provide further description of alternative embodiments of the invention. No new matter has been added as antecedent support may be found in the specification as originally filed, such as at Figure 1 and the accompanying text for example.

In view of the amendments and remarks set forth above regarding Claim 13, Applicant submits that Claims 19 and 20 are directed to allowable subject matter, and therefore respectfully requests entry and notice of allowance thereof.

The Commissioner is hereby authorized to charge any additional fees that may be required for this amendment, or credit any overpayment, to Deposit Account No. 07-0846.

In the event that an extension of time is required, or may be required in addition to that requested in a petition for extension of time, the Commissioner is requested to grant a petition for that extension of time that is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to the above-identified Deposit Account.

Respectfully submitted,

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